

INTER-OFFICE ORIGINAL TO:  
CITY OF BOZEMAN  
PLANNING DEPARTMENT  
20 EAST OLIVE STREET

**DECLARATION  
OF  
BAXTER MEADOWS CENTRAL  
A PLANNED COMMUNITY**

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**DECLARATION**  
**OF**  
**BAXTER MEADOWS CENTRAL**  
**(A PLANNED COMMUNITY)**

**THIS DECLARATION** is made on the date hereinafter set forth by Baxter Meadows West LLC, a Montana limited liability company (“**Declarant**”).

**RECITALS**

**A.** Declarant is the owner of certain real estate in the Gallatin County, State of Montana, which is more particularly described as set forth in *Exhibit A* attached hereto and by reference made a part hereof.

**B.** Declarant desires to create a planned community on the real estate described in *Exhibit A* under the name of “Baxter Meadows Central,” in which portions of the real estate described in *Exhibit A* will be designated for separate ownership and uses of a residential nature and in which portions of the real estate are to be owned by an owners’ association.

**C.** Declarant has caused the “Baxter Meadows Central Property Owners Association, Inc.,” a Montana nonprofit corporation, to be incorporated under the laws of the State of Montana, as an owners’ association, for the purpose of exercising the functions set forth in this Declaration.

NOW, THEREFORE, Declarant declares and states as follows:

**ARTICLE 1.**  
**SUBMISSION/DEFINED TERMS**

Section 1.1 Submission of Property. The Declarant hereby submits the real estate described in *Exhibit A* and such additional real property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the “**Property**”), and to the terms and conditions of this Declaration. This Community is not subject to M.C.A. 70-23-101. Declarant hereby declares that all of the Property described in *Exhibit A*, and as added by expansion, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Property, that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Lot Owner thereof.

Section 1.2 Name and Type. The type of common interest community is a Planned Community. The name of the Association is the "Baxter Meadows Central Property Owners Association, Inc."

Section 1.3 Property. The Community is located in the Gallatin County, State of Montana. The initial Property of the Community is described in *Exhibit A*. The Community may be subject to easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established or allowed for in the Act.

Section 1.4 Defined Terms. Each capitalized term in this Declaration or in the Plat shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration:

- (a) "**Architectural Review Committee**" or "**Committee**" or "**ARC**" means the committee initially established by the Declarant for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.
- (c) "**Assessment**" shall include all common expense assessments, insurance assessments, utility assessments, and any other expense levied to a Lot pursuant to this Declaration or the Act.
- (d) "**Association**" shall mean Baxter Meadows Central Property Owners Association, Inc., a Montana nonprofit corporation, and its successors.
- (e) "**Common Elements**" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and such property as Declarant may convey to the Association.
- (f) "**Common Expense**" shall mean any expenditure made or a liability received by or on behalf of the Association, together with any allocations to reserves.
- (g) "**Common Expense Assessment**" shall mean the Assessment for allocation of Common Expenses among the Lots and Owners, as provided in this Declaration and the Act.
- (h) "**Community**" shall mean the planned community known as "Baxter Meadows Central," and the real property subject to this Declaration and as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.
- (i) "**Declarant**" shall mean the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by the Declarant designated in this Declaration and executed by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.

- (j) **“Development”** or **“Special Declarant Rights”** shall mean those rights set forth in this Declaration and those rights, if any, set forth in the Act.
- (k) **“Executive Board,” “Board”** or **“Board of Directors”** shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association.
- (l) **“Exhibit B”** shall mean and refer to *Exhibit B* as attached to and incorporated in this Declaration, and as Exhibit B may be amended or supplemented, from time to time.
- (m) **“Governing Documents”** shall mean this Declaration, the Plat, any Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.
- (n) **“Improvement(s)”** shall mean structures installed within or upon a Lot.
- (o) **“Limited Common Elements”** shall mean those portions of the Common Elements, if any, designated by Declarant for the exclusive use of one or more but fewer than all of the Lots.
- (p) **“Lot”** or **“Unit”** shall be defined to enable these terms to be used interchangeably, as appropriate, and shall mean and refer to any plot of land shown upon any recorded subdivision Map or Plat of the Property with the exception of Common Elements, if any.
- (q) **“Map”** shall mean and refer a recorded map(s) of the Property and Improvements that are subject to this Declaration. More than one map or supplement thereto may be recorded, and, if so, then the term “Map” shall collectively mean and refer to all maps and supplements thereto.
- (r) **“Master Declaration”** shall mean the Community Declaration for Baxter Meadows Master Community.
- (s) **“Member”** shall mean and refer to those persons entitled to membership as provided in the Bylaws and as set forth in this Declaration.
- (t) **“Owner”** shall mean any person or entity that owns a Lot.
- (u) **“Pet”** shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.
- (v) **“Period of Declarant Control”** shall mean the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of seven years thereafter, 60 days after conveyance of 75% of the Lots that may be made subject to this Declaration, after conveyance of those Lots to Owners other than Declarant, two years after the last conveyance of a Lot by the Declarant in the ordinary course of business or two years after any right to annex property was last exercised; provided, however, that if the Period of Declarant Control has not



terminated pursuant to the foregoing provisions, the Period of Declarant Control shall in any case terminate on the date upon which all property subject to annexation to the Community has become a part of the Community and the last Lot within the Community has been conveyed by the Declarant.

(w) **“Plat”** shall mean and refer to the plat(s) of the Property and Improvements that are subject to this Declaration. More than one Plat or supplement thereto may be recorded, and, if so, then the term **“Plat”** shall collectively mean and refer to all plats and supplements thereto.

(x) **“Property”** or **“Real Estate”** shall mean the property described in this Declaration together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(y) **“Rules and Regulations”** shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including architectural guidelines, and including any amendment to those instruments.

## **ARTICLE 2. EASEMENTS**

Section 2.1 Utility, Map and Plat Easements. Easements for utilities and other purposes over and across the Lots and Common Elements may be as shown upon the recorded Plats of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by or under the authority reserved in any recorded document.

Section 2.2 Owners' Easements of Enjoyment/Acknowledgments.

(a) Every Owner shall have a right and easement access to their Lot and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) the Development and Special Declarant Rights of the Declarant reserved in this Declaration;

(ii) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;

(iii) the right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements, and the right of the Association to close or limit the use of any Common Elements;

- (iv) the right of the Association to suspend the voting rights and, after notice and the opportunity for a hearing, the right to use of any Common Elements, for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater;
- (v) the right of the Association, upon approval of at least 67% of the total Association vote, to mortgage the Common Elements as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners;
- (vi) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Elements;
- (vii) the right of the Association to transfer or convey ownership of the Common Elements, or any portion thereof, subject to the prior approval of 67% of the total Association vote;
- (viii) the right of the Association to change use of, add or remove improvements to the Common Elements.

Section 2.3 Drainage Easements. An easement is hereby granted to the Association and Declarant and local government, their officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property subject to this Declaration for the purpose of changing, correcting or otherwise modifying the grade of the Property, the Lots or drainage channels so as to improve the drainage of water. Said easements shall be deemed to also include easements for the collection of storm water runoff. Every Lot and the Common Elements shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property; provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Property or any Lot without the consent of the Owner of the affected property. Any damage to any Improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.4 Utilities. Declarant hereby creates and reserves to the Association, a blanket easement upon, across, over and under the Association for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment, effluent irrigation systems, gas, telephone, electricity and master television antenna or cable systems, if any; *provided, however,* such easement shall not encumber or affect any portion of the Real Estate that is anticipated to be improved, or that has been improved, with a residence, improvement or any related structure, such as a patio or garage. By virtue of this blanket easement, it shall be expressly permissible for the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain

landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters, and such other improvements or facilities. If any utility or quasi-utility company furnishing a service covered by the general easement created in this Section requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Property is reserved, provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.5 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.6 Delegation of Use. Any Member may delegate, in accordance with the Bylaws and Rules and Regulations adopted by the Executive Board, his right of enjoyment to the Common Elements to the members of his family, his tenants, or contract purchasers who reside on the Property. If the Owner delegates rights to use the Common Elements and facilities to tenants or contract purchasers who reside on the Property, the Owner shall not be entitled to use the Common Elements and facilities.

### ARTICLE 3. THE ASSOCIATION

Section 3.1 Membership. Every person who is a record Lot Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds an interest in any Lot, all such persons shall be Members.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Executive Board, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Lots and to further the interests of the residents, occupants, tenants and guests of the Community and members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Executive Board. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Executive Board, and the business and affairs of the Association shall be managed under the direction of the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

Section 3.4 Association Agreements. Any agreement for professional management of the Community must provide for termination by either party with or without cause and without payment of a termination fee or penalty upon 30 days written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant Control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than 30 days' notice to the other party thereto.

Section 3.5 Bulk Service Agreements. The Association shall have the power and authority to enter into bulk service agreements for such terms and rates as it deems appropriate in order to provide the Owners with any of the following services: cable television, community satellite television, electronic entertainment, information or communication services, trash removal or any other service the Association believes to be in the best interests of the Owners. If such a bulk service agreement is executed, the costs shall be allocated a Common Expense of the Association.

Section 3.6 Allocated Interests.

(a) Common Expense liability and votes in the Association allocated to Lots are as follows:

- (i) The percentage of liability for Common Expenses, on an equal basis between each Lot in the Community;
- (ii) The percentage of liability for expenses related to a Limited Common Element, shall be allocated on an equal basis to those to whom the Limited Common Element is assigned.

(b) If Lots are added to the Community, pursuant to the provisions of this Declaration, the formulas set forth above, or then in use, shall be used to reallocate the Allocated Interests.

(c) Declarant reserves the right to change the above formulas for allocation of the Allocated Interests, based on possible future annexations to the property.

Section 3.7 Duty to Accept Common Elements and Facilities Transferred by Declarant. The Association shall accept any Common Elements or property, including any Improvements thereon, and personal property transferred to the Association by Declarant and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and Assessments not then due and payable), but shall be subject to the terms of this Declaration and any Supplemental Declaration applicable thereto.

Section 3.8 Power to Operate and Charge for Facilities and Services. The Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, without limitation, landscape maintenance and refuse collection, or any other similar or dissimilar function, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities or services of the Association. Such charges or fees shall be as determined from time to time by the Executive Board.

Section 3.9 Indemnification. To the full extent permitted by law, each officer, director, committee member or volunteer of the Association shall be and hereby are indemnified by the Owners and the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching his or her duty of care in the performance of his or her duties.

Section 3.10 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to

the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.11 Education and Training. As a Common Expense, the Association may provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting facilities use for such purposes. The Association may provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community. The Association may also fund and support education and training for officers and directors.

Section 3.12 Declarant's Right to Appoint During Period of Declarant Control. The Declarant shall have the reserved power to appoint and remove officers and members of the Board as allowed under this Declaration and more particularly provided for in the Bylaws, based on the total number of Lots that may be created within the Community pursuant to this Declaration. The Declarant may voluntarily surrender any or all of the foregoing rights to appoint and remove officers and members of the Board before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

#### ARTICLE 4. LOTS AND COMMON ELEMENTS

Section 4.1 Number of Lots. The number of Lots initially included in the Community is (172). Declarant has the reserved right to create and add additional Lots up to a total of two hundred and twenty (250) Lots or such larger number as allowed on the Real Estate by local government, whichever is greater.

Section 4.2 Common Elements. The property described in *Exhibit D* and any improvements thereon are the initial Common Elements to be deeded by the Declarant to the Association. Portions of any Common Elements may be subsequently designated by Declarant as a part of a Lot. The improvements on the Common Elements may be changed from time to time by the Executive Board of the Association. Portions of the Common Elements may be designated by Declarant as a part of a Lot or as a Limited Common

Element to a Lot or Lots. Portions of Lots not yet conveyed by Declarant to a third party Owner may become Common Elements or Limited Common Elements, pursuant to rights reserved elsewhere in this Declaration. Portions of Lots may become Common Elements, pursuant to rights reserved elsewhere in this Declaration.

Section 4.3 Limited Common Elements. The Declarant reserves, for itself, through seven years after the recording of this Declaration, the right to allocate areas of the Community as Limited Common Elements, for the exclusive use of the owners of Lots to which those specified areas shall become appurtenant. The Declarant may allocate or assign Common Elements or Limited Common Element areas (1) by making such an allocation in a recorded instrument, or (2) in the deed to the Lot to which such Limited Common Element shall be appurtenant, or (3) by recording an appropriate amendment or supplement to this Declaration, or (4) by recording a supplement to the Plat or by recording a map. Such allocations by the Declarant may be made as a matter of reserved right.

Section 4.4 Initial Limited Common Elements. The property described in *Exhibit E* are the initial Limited Common Elements, the exclusive use of which is assigned to the Lots indicated on *Exhibit F*. The Declarant reserves the right to assign rights to use to any Limited Common Element to additional Lots and reserves the right to assign additional Limited Common Elements.

Section 4.5 Allocation of Expenses for Limited Common Elements. In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses shall be assessed equally against the Lots to which the Limited Common Element is assigned.

## ARTICLE 5. MAINTENANCE

Section 5.1 Association Responsibility. The Association shall repair, replace, improve and maintain the Common Elements (including perimeter fencing and other fences designated as Common Elements on the Map) and all improvements located thereon including without limitation any common landscaping, common sprinkler system, common private roadways or common driveways (excluding driveways that serve two, three or four Lots, as shown on the Plat), any common light fixtures, common sidewalks and common pathways, unless any of the foregoing are maintained by the Baxter Meadows Community Association.

Section 5.2 Association Discretion. The Association shall, in its sole discretion, assume the obligation for repair or maintenance of other exterior features not expressly included in this Declaration. The Association shall, in its sole discretion, ascertain whether the maintenance obligation is the duty of the Association and is necessary. The Association, in its sole discretion, shall determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used.

Section 5.3 Access. For the purpose of performing the maintenance referred to in this Article, and inspections related thereto, the Executive Board, through its duly authorized agents, contractors, employees or the Architectural Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Executive Board or its agents, contractors or employees, may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 5.4 Owner Maintenance.

- (a) Each Owner shall have the obligation to maintain, repair and replace all portions of the Owner's Lot and the Limited Common Elements appurtenant thereto. Such maintenance shall include, but not be limited to the following:
- (i) all paint, repair, replace, maintain and care for roofs, gutters, downspouts, fences, patios, decks, balconies, railings and exterior building surfaces on each Lot. An Owner shall not paint or change the appearance of the exterior of his home without the prior written consent of the Architectural Review Committee and the DRB;
  - (ii) Owners shall be responsible for maintaining water and electricity to any automatic sprinkler systems, timers, clocks or related equipment, as located in or on their Lot;
  - (iii) all glass surfaces, windows, window frames, casings and locks (provided, however, no changes that affect the exterior appearance of the windows may be made unless prior written approval is obtained from the Architectural Review Committee and the DRB);
  - (vi) any lights, exterior light fixtures and exterior light bulbs appurtenant to a Lot;
  - (vii) any patio, balcony, yard or deck enclosure, and any fence or wall enclosing a patio, balcony, yard or deck;
  - (viii) all utilities, fixtures and equipment servicing a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems serving such Lot connects with a main line shall be maintained and kept in repair by the Owner thereof; all utility meters or other apparatus serving only their home; and communications, television, telephone and electrical lines, receptacles and boxes serving their home;





(ix) any Association approved additions or alterations made by the Owner to the Lots or Limited Common Elements.

(b) Owners that share a driveway (as shown on the Plat) shall jointly have the obligation to maintain, repair and replace all portions of that shared driveway in equal proportions. If a shared driveway requires maintenance, repair, replacement or improvement, as reasonably determined by any Owner with a right to use that shared driveway, then, that Owner may maintain, repair, replace and/or improve the shared driveway, and if the other Owners thereafter make use of the driveway, they shall contribute to the costs in equal proportions without prejudice, however, subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. An Owner who by his negligent or willful act causes a shared driveway to be exposed, or to be damaged or require repair, shall bear the whole cost of repair. In the event of any dispute arising concerning a shared driveway, or under the provisions of this section of the Declaration, the parties shall first submit the dispute to mediation before pursuing enforcement options as provided for in this Declaration. If the dispute cannot be resolved through mediation, the parties may pursue the dispute in arbitration or through a legal proceeding before a court as provided in other portions of this Declaration.

(c) An Owner shall do no act nor any work that will impair any easement or utility service, nor do any act or allow any conditions to exist which will adversely affect the use and enjoyment of the other Lots or the provision of utility services to such Lots.

(d) No Owner shall, in whole or in part, change the landscaping or drainage pattern adjacent to his Lot by the addition or removal of any items thereon without the prior written consent of the Architectural Review Committee.

(e) If an Owner fails to fulfill his responsibilities under this Section, the Board may, at its option, take such action as it deems appropriate, including without limitation performing the Owner's obligations, after 10 days notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an Assessment against such Owner and his Lot.

Section 5.5 Negligence . In the event that the need for maintenance or repair of the Common Elements or any portion of the Property is caused through the willful or negligent act of the Owner, his family, guests, tenants, or invitees, then the cost of such maintenance or repairs shall be the personal obligation of such Owner, and if not repaid to the Association within 10 days after the Association shall have given notice to the Owner of such expenses, costs and fees, then failure to so repay shall be a default by the Owner under the provisions of this Declaration, and such expenses, costs and fees shall automatically become an Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Declaration to collect the Assessment.

## ARTICLE 6. COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Declarant, for each Lot, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums owed to the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Lots equally.

Section 6.2 Basis of Assessments. The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 6.3 Annual Assessment. The budget for annual Assessments may be submitted to the Lot Owners for ratification and as set forth in the Bylaws, as the Bylaws may be amended from time to time. If submitted, the budget may be vetoed by votes of Owners representing a majority of the total Association vote. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

Section 6.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed

Special Assessment shall be submitted to the Lot Owners for ratification and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by a majority of the total Association vote. A proposed Special Assessment will be ratified unless Owners representing more than a majority of the votes allocated to the Lots that will be subject to the special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 6.5 Commencement of Assessments. The obligation to pay Assessments against fewer than all of the Lots as provided for in this Declaration shall commence as to each Lot upon conveyance of Property to first Owner. on the first day of the month following the later of: (a) the month in which the Lot is made subject to this Declaration or (b) the month in which the Association first establishes and ratifies a budget and levies Assessments pursuant to this Declaration. The first annual Common Expense Assessment levied on each Lot, whether levied at partial or full rate as provided in this Declaration, shall be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 6.6 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 10 days after the due date thereof, as established by the Executive Board, shall bear interest at the rate established by the Executive Board, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Executive Board. Failure to make payment within 10 days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board

may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 6.7 Assignment of Rents. If a Lot is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Lot are more than 30 days delinquent, the Board may collect, and the occupant or lessee shall pay to the Board, the rent for any Lot owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Board's request. The Association shall send notice to the Owner by any reasonable means at least 10 days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Board's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Lot rental or a waiver of the Owner's obligations as provided in the Declaration. The Board shall not exercise this power where a receiver has been appointed with respect to a Lot or Owner; nor in derogation of the exercise of any rights to rents by a the holder of a first lien security interest of a Lot. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Montana statutes, and the costs and attorney's fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Lot in the same manner as any other Assessment under this Declaration.

Section 6.8 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as may be allowed by the Act with regard to a limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 6.9 Working Fund. The Association shall require every Owner of a Lot (other than Declarant) to make a non-refundable payment to the Association in an amount equal to three months of the annual Common Expense Assessment against that Lot in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Lot, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of Assessments as the same become due.

Section 6.10 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses, costs and fees incurred by the Association are not repaid to the Association within seven days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Declaration.

Section 6.11 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: Lot insurance; improvement, repair, replacement and maintenance specific to a Lot; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (b) any extraordinary maintenance, repair, improvement and replacement costs of any area which the Association maintains required on fewer than all the Lots;
- (c) all fines and costs assessed against an Owner pursuant to the Governing Documents; and
- (d) any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

Section 6.12 Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Owners present and voting, in person or by proxy, at a duly constituted meeting called for that purpose.



**ARTICLE 7.  
RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY**

All Property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

Section 7.1 Use of Lots/Occupancy of Improvements on Lots. All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation. Occupancies may also be subject to any Rules and Regulations adopted by the Association. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as such use is incidental and secondary to the use of the Lot and does not change the residential character thereof and complies with local zoning ordinances and regulations. In no event shall external advertising, of any kind, be permitted. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner.

Section 7.2 Design Approval Required/Architectural Review Committee. Improvements to the Lot must first be approved by the Architectural Review Committee, except for any real property added to this Community by Declarant, as allowed for in this Declaration. Property added to the Community by Declarant may be exempt from this Article, initially, and for subsequent Improvements. Specifically, no structure, temporary building, trailer attachment, improvements, landscaping change shall be commenced, constructed, erected, placed or installed, including, but not limited to, a change in painting and/or staining of exterior siding, unless first submitted to and approved in writing by the Architectural Review Committee. No shed or other outbuilding shall be used or permitted to be kept or stored on any portion of a Lot, either temporarily or permanently, unless approved by the Architectural Review Committee. All additions to the Improvements on a Lot shall be of new construction.

Section 7.3 Landscaping Covenants and Restrictions. All portions of a Lot not improved with a residence, driveway, walkways, patios or decks (referred to as the unimproved area of a Lot) shall be landscaped by and maintained, repaired, replaced and improved by the Owner. No Owner may make any changes to the landscaping without the prior written approval of the Association.

Section 7.4 Plat Restrictions. The restrictions, if any, included on the plat for the Property are incorporated in this Declaration by this reference.

Section 7.5 Lot Maintenance.

(a) Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Lot boundaries which are not specifically the obligation of the Association to maintain, replace and keep in good repair, as set forth in other sections of this Declaration.

(b) Each Lot, at all times, shall be kept well maintained, in good repair, and replacement, and in a clean, sightly and wholesome condition.

(c) Trash, litter, junk, boxes, containers, bottles, cans implements, machinery, lumber or other building materials shall not be permitted to remain exposed upon or within any Lot so that the same are visible from any neighboring Lot, or any street, except as necessary during a period of construction.

(d) During construction of or remodeling of Improvements on a Lot, the Owner and their contractors, if any, shall keep the Owner's Lot in a neat and maintained order, without construction debris on the Lot, and without debris blown or otherwise deposited or left elsewhere in the Community.

(e) The Association and its agents, after 30 days notice to the Owner, shall have the authority to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Lot Owners thereof all reasonable costs related thereto as an Assessment hereunder.

Section 7.6 Fences and Privacy Walls. Fences, and/or privacy walls must have prior written approval of the Architectural Review Committee.

Section 7.7 Restrictions on Vehicles, Vehicular Parking, Storage and Repairs.

(a) Parking upon any Common Elements is prohibited.

(b) The following may not be parked or stored within the Community, unless such parking or storage is completely within a garage on a Lot or authorized in writing by the Association:

(i) List of precluded vehicles, trailers, etc:

- (1) oversized vehicles;
- (2) trucks or pickup trucks over 3/4 ton;
- (3) commercial delivery vans or delivery vehicles;
- (4) commercial vehicles;
- (5) vehicles with commercial writing on their exteriors;



- (6) trailers;
  - (7) camping trailers;
  - (8) boat trailers;
  - (9) hauling trailers;
  - (10) boats or accessories thereto;
  - (11) self-contained motorized recreational vehicles; or
  - (12) other oversized types of vehicles or equipment as prohibited by rule or regulation.
- (ii) Any of the foregoing may be parked temporarily, for not longer than 48 hours within any given month for loading, delivery of goods or services, or emergencies.
- (iii) Overnight parking of the foregoing is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Elements, Lots, or any improvement located thereon.
- (c) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Montana statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered mailed to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within 72 hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing, fines and storage charges.
- (d) No parked vehicle may impede the safe and efficient use of the streets by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, including driveways that are shared by two, three or four Lots or Community streets.
- (e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages.
- (f) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.
- (g) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that





after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

(h) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

Section 7.8 No Temporary Structures/Sheds. Except during construction of Improvements on a Lot, no trailer, mobile home, tent or shack or other temporary building or similar structure shall be placed upon any Lot. Sheds or storage areas may be allowed subject to application to the Architectural Review Committee and the Association.

Section 7.9 Roof Apparatus. No types of refrigerating, cooling or heating apparatus shall be permitted on a roof or in a window, and no such apparatus shall be permitted elsewhere on a Lot, except when appropriately screened and approved by the Architectural Review Committee and Association.

Section 7.10 No Wind Generators. No wind generators of any kind shall be constructed, installed, erected, or maintained on the Lots.

Section 7.11 Clotheslines and Storage. No clotheslines, equipment or storage areas shall be so located on any Lot as to be visible from a street and/or public view.

Section 7.12 Restrictions on Animals and Pets.

(a) Pets may be kept in a home or on a Lot, *if* no more than two (2) Pets are kept *if* and the Pet is not a nuisance to other Owners or occupants.

(b) No Owner or resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations.

- (c) If a Pet is deemed a nuisance by the Association, the Owner or person having control of the Pet shall be given a written notice to correct the problem and if not corrected, that Owner will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any.
- (d) Pets may not be kept for any commercial purposes.
- (e) When on the Common Elements or outside of a home or off a Lot, Pets must be on a leash and under the control of the Owner of the Pet.
- (f) Feces left by Pets any where in the Community must be removed promptly by the owner of the Pet or the person responsible for the Pet. Owners in violation will be fined.
- (g) Pets shall not be allowed to defecate or urinate on any patio or balcony in the Community.
- (h) Owners shall hold the Association harmless from any claim resulting from any action of their Pets.

Section 7.13 Restriction on Further Subdivision of Lots. Lots in the Community may not be further subdivided into smaller or a larger tracts or Lots, without the written approval of the Board.

Section 7.14 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Lot or Common Elements, or any portion of the Community by Owners. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. As used in this Declaration, the term "nuisance" shall not include activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within this Community; *provided, however,* that such activities shall not reasonably interfere with any Owner's use and enjoyment of their Lot, or any Owner's ingress and egress to or from their Lot or a public way.

Section 7.15 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 7.16 Antenna. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless



signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot.

Section 7.17 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 7.18 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except for one "for sale" or "for rent" signs and such other sign or signs as may be approved in writing by the Executive Board.

Section 7.19 Restriction on Sale of a Lot. The right of an Owner to sell, transfer or otherwise convey their Lot shall not be further restricted or subject to any right of first refusal or similar restriction.

Section 7.20 No Restrictions on Mortgaging of a Lot. There are no restrictions on the right of the Owners to mortgage or otherwise encumber their Lot. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 7.21 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Executive Board, or its successors and assigns. The Executive Board may establish and enforce penalties for the infraction thereof.

Section 7.22 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, and any others with reserved Development Rights (as and if allowed for under this Declaration) to perform such reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Lots in the development of the Community, specifically including,

without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, models, temporary sales offices, parking areas and lighting facilities.

Section 7.23 Use of the Words Baxter Meadows Central and Baxter Meadows Central Property Owners Association, Inc. No resident shall use the words Baxter Meadows Central or Baxter Meadows Central Property Owners Association, Inc. or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

## ARTICLE 8. ARCHITECTURAL REVIEW

Section 8.1 Required Approval. In addition to approvals as may be needed under the Master Declaration, no structures, including, but not limited to, primary residence, accessory buildings, sheds, swimming pools, antennas, flag poles, fences, walls, exterior lighting, landscaping, yard or decorative ornaments or any other Improvement shall be constructed erected or installed on a Lot, nor shall any alteration or change to the exterior of the Improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced within the Community unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee. Only house numbers and mail boxes which have been approved by the Architectural Review Committee shall be used and maintained on any Lot within the Community. The Architectural Review Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement (plotted horizontally and vertically), location and size of driveways, walls, and grading plan, as well as such other materials and information as may be required by the Committee.

Section 8.2 Architectural Criteria. The Architectural Review Committee shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration. The approval or consent of the Architectural Review Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration.

Section 8.3 Establishment of the Design Review Board. The Architectural Review Committee shall consist of a minimum of three members. Until 100% of all Lots in the community have been conveyed by the Declarant, Declarant shall appoint all

members of the Architectural Review Committee and may remove any appointee at any time upon written notice to such appointee. After expiration of Declarant's appointment rights, the Architectural Review Committee may then be comprised completely of Lot Owners without regard to special qualifications and the members shall then be appointed by the BMCPOA Board of Directors annually. Until that date, Declarant, in its sole discretion, may at any time grant the power of appointment of the members of the Architectural Review Committee, and the chairman thereof, to another or to the Association. Notwithstanding the above, appointments shall be for staggered terms of a year different in termination so as to provide reasonable continuity to the architectural review process.

Section 8.4 Architectural Guidelines. The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board and included in or with any Rules and Regulations of the Association.

Section 8.5 Reply and Communication. The Committee shall reply to all submittals of plans made in accordance herewith in writing within 30 days after receipt. In the event the Architectural Review Committee fails to take any action on submitted plans and specifications within 30 days after the Committee has received the plans and specifications, approval shall be deemed to be denied; provided, however, even if the requirements of this Section are satisfied, nothing in this Section shall authorize anyone to construct or maintain any structure or Improvement that is otherwise in violation of the Declaration, architectural guidelines or Rules and Regulations then in effect. All communications and submittals shall be addressed to the Architectural Review Committee such address as the chairman of the Committee shall hereafter designate in writing addressed and mailed to the Owners.

Section 8.6 Variances. The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in architectural guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Elements nor deviate substantially from the general intent and purpose of this Declaration.

Section 8.7 Right to Appeal. An Owner may appeal any decision of the Architectural Review Committee to the Board. The Board shall review the decision of the Architectural Review Committee pursuant to the criteria set forth in this Declaration and the architectural guidelines. Any decision of the Architectural Review Committee may be overruled and reversed by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the Architectural Review Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 8.8 Waivers. The approval or consent of the Architectural Review Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Architectural Review Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 8.9 Liability. The Architectural Review Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 8.10 Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 8.11 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE 9. DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 9.1 Development Rights and Special Declarant Rights. The Declarant reserves, through seven years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- (a) the right to relocate boundaries between adjoining Lots owned by the Declarant, subdivide Lots owned by Declarant or complete or make improvements, as the same may be indicated on Maps or Plats filed of record;
- (b) the right to enlarge or reduce the Common Elements and to create additional Lots, subject to the limitations set forth in Section 4.1 of this Declaration;
- (c) the right to add Lots and to subject all or any part of the property described in *Exhibit B* attached hereto and hereby incorporated by reference and additional unspecified real estate to the provisions of this Declaration subject to the limitations set forth in this Declaration;



- (d) the right to exercise any additional reserve right created by any other provision of this Declaration;
- (e) the right to withdraw Lots owned by Declarant from the Community and the terms of this Declaration, except for lots with dwellings once a dwelling on that Lot has been conveyed, and with the withdrawal rights of the Declarant. Such withdrawal may be accomplished by the execution, acknowledgment and recordation of a notice of withdrawal. The notice of withdrawal (I) shall be executed and acknowledged by the Owner or Owners of the property to be withdrawn; (ii) shall, if not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Community and has the power to annex additional property to the Community; (iii) shall contain an adequate legal description of the property to be withdrawn; (iv) shall contain a reference to the Supplemental Declaration for the portion of the Real Property to be withdrawn, which reference shall state the date thereof and the date of recordation thereof; and (v) shall contain a statement and declaration that the property sought to be withdrawn is withdrawn from the Community and from the effect of this Declaration;
- (f) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;
- (g) the right to amend the Declaration in connection with the exercise of any development right;
- (h) the right to amend the Maps or Plats in connection with the exercise of any development right;
- (i) the right to make amendments to the Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA; and
- (j) the rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above, unless (I) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by the Declarant, recorded in the real property records of the Gallatin County.

Section 9.2 Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights:

- (a) *Sales*. The right to maintain mobile and other sales offices, parking lots, management offices and models on Lots of the Declarant.
- (b) *Construction Easement*. Declarant and its assignees expressly reserve to itself the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Lots and in Common Elements, and the future



right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.

Section 9.3 Rights Transferrable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the Gallatin County. Such instrument shall be executed by the transferor Declarant and the transferee. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of the Gallatin County. Such instrument shall be executed by the transferor Declarant and the Association as transferee.

Section 9.4 No Further Authorizations Needed. Except as set forth in this Declaration, the consent of Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Lots initially submitted.

Section 9.5 Amendment of the Declaration or Plat. If Declarant or its assignees elect to exercise any reserved rights, including amendment or supplement of this Declaration or the Plat, that party shall comply with applicable provisions of the Act.

Section 9.6 Interpretation. Recording of amendments to the Declaration and the plat or plats pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Lot, and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all Amendments to the Declaration, and the Plat without specific reference thereto.



Section 9.7 Construction. Subsequent to the initial Property and improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Property or any part thereof may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the Improvements previously constructed on the Property, nor of the same size, style or configuration. The improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Property as may be added or as shown on the Plat.

Section 9.8 Termination of Reserved Rights. The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law or, (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of the Gallatin County, State of Montana.

## ARTICLE 10. INSURANCE/CONDEMNATION

Section 10.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Montana. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies.

Section 10.2 Real Property Insurance of Owners on their Homes. Each Owner is advised to obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on their Lot. Such insurance should include furnishings and personal or other property in the home and liability insurance for injury, death or damage in the home or upon the Lot.

Section 10.3 Liability Insurance of the Association. The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering all of the Common Elements, in such limits as the Board may from time to time determine, but not in any amount less than \$1,000,000.00 per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Lots and the Common Elements. The foregoing liability insurance shall name the Association as the insured.

Section 10.4 Fidelity Insurance of the Association. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees. If the Association retains a Managing Agent, the Managing Agent shall be required to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

Section 10.5 Workers Compensation of the Association. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 10.6 Director and Officer Liability Insurance of the Association. The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers.

Section 10.7 Other Insurance of the Association. The Association may obtain insurance against such other risks, of similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

- (a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 45 days prior written notice to all of the Owners, holders of First Mortgages and the Association.
- (b) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least 10 days prior to expiration of the then current policies.
- (c) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association, as insureds.
- (d) Prior to renewing casualty insurance and not less than every three years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably

estimate the full replacement cost of the Townhouses and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

(e) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 10.9 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 10.10 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including workers' compensation, unemployment and fidelity coverage.

Section 10.11 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 10.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any first mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and first mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and first mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored. If the insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Association may levy a Special Assessment to cover the short fall (or deductible) pursuant to this Declaration.

Section 10.13 Claims. The Board may, in its discretion, choose to submit a claim under the Association's insurance policy. If a claim is submitted, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

- (a) The Association shall pay or absorb said deductible for any work, repairs or reconstruction for damage incurred to Common Elements or an area for which the Association has a maintenance responsibility, or for damage to Common Elements or any area which the Association maintains that originates in the Common Elements or an area that the Association maintains, or for damages to the Common Elements or an area which the Association maintains which originates from natural causes, unless said damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees; provided, however, the Association may levy a Special Assessment against all Owners to cover the deductible as provided in this Declaration.
- (b) The Owner shall pay or absorb said deductible for any work, repairs, reconstruction or replacement for damage incurred to his or her Lot, to the Common Elements, or to any area that the Association maintains, as the Association shall, in its sole discretion, determine to be the responsibility of the Owner.
- (c) If a Lot or Party Wall is damaged, then the Owner of that Lot or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

Section 10.14 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners. Notwithstanding the Special Assessment procedure set forth this Declaration, the insurance Assessment shall be ratified unless vetoed by 90% of the Members and as set forth in the Bylaws, as the Bylaws may be amended from time to time.

Section 10.15 Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and

power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

**ARTICLE 11.**  
**GENERAL PROVISIONS**

Section 11.1 Compliance and Enforcement.

- (a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.
- (b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:
  - (i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, at the Board's discretion, the fine may first be assessed against the violator; provided, however, if the fine is assessed against the violator and is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the opportunity for a hearing have been provided);
  - (ii) suspending the right to vote;
  - (iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;
  - (iv) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;
  - (v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

- (vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and
  - (vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.
- (c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.
- (d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.
- (e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case:
- (i) the Association's legal position is not strong enough to justify taking any or further action;
  - (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
  - (iii) that it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Section 11.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.



Section 11.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.4 Amendment of Declaration, Map or Plat by Declarant. If Declarant shall determine that any amendments to this Declaration or the Plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of seven years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 11.5 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at least 67% of the votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the Gallatin County, State of Montana of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 11.6 Amendment Required by Mortgage Agencies. Prior to seven years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien security interest, or FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the Gallatin County, State of Montana of a certificate setting forth the amendment or repeal in full.

Section 11.7 FHA/VA Approval. As long as the Declarant has the right to appoint and remove officers and directors of the Association, the following actions shall require the prior approval of the VA (so long as the VA is guaranteeing any Mortgage in the Community), and FHA (so long as FHA is insuring any Mortgage in the Community):



annexation of additional property to the Community; mergers and consolidations; dedication of Common Property to any public entity; dissolution; mortgaging of Common Property, and material amendment of the Declaration, Bylaws or Articles of Incorporation.

Section 11.8 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 11.9 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Executive Board shall have the authority to interpret the meaning of any provision contained in this Declaration.

Section 11.10 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.





IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agent this 19<sup>th</sup> day of September, 2005.

**BAXTER MEADOWS DEVELOPMENT L.P.,**  
a Montana limited liability partnership,

By: *[Signature]*  
Authorized Agent

STATE OF MONTANA )  
 ) ss.  
COUNTY OF Gallatin )

The foregoing Declaration was acknowledged before me by Gerald R. Williams, as Authorized Agent, of Baxter Meadows Development L.P., this 19<sup>th</sup> day of September, 2005.



*[Signature]*  
Terri Zullo  
Notary Public for the State of Montana  
Residing at Bozeman  
My Commission expires: July 31, 2007

***EXHIBIT A***

**DESCRIPTION OF PROPERTY**

All of those lands situated west of the centerline of Gallatin Green Boulevard in the Final Plats of Baxter Meadows Phases 2C, 2D, and 2G, all located in the S½ of Section 34, Township 1 South, Range 5 East, P.M.M., City of Bozeman, Gallatin County, Montana.

Property may be added by exercise of reserved development rights, as set forth in this Declaration.

Property added to the Community may be subject to the following easements and interests of record:

1. Plat of Baxter Meadows West as amended and supplemented of record;
2. The Master or Community Declaration for the Baxter Meadows Master Community.
3. Other instruments of record.



***EXHIBIT B***

**PROPERTIES OWNED BY DECLARANT**  
**WHICH MAY BE ADDED TO THE DECLARATION**

All or part of any real estate located adjacent to the Community, or across a public street, ditch or easement from the Community, provided the owner of that real estate consents, and provided all other consents or votes required by this Declaration are first obtained.



*EXHIBIT C*

**OTHER PROPERTIES WHICH MAY  
BE ADDED TO THE DECLARATION**

All or part of any real estate located adjacent to the Community, or across a public street or alley from the Community, provided the owner of that real estate consents.



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Shelley Vance-Gallatin Co MT MISC 490.00

*EXHIBIT D*

**INITIAL COMMON ELEMENTS**

None.



*EXHIBIT E*

**INITIAL LIMITED COMMON ELEMENTS**

None.

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***BYLAWS  
OF  
BAXTER MEADOWS CENTRAL  
PROPERTY OWNERS ASSOCIATION, INC.***

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**BYLAWS**  
**OF**  
**BAXTER MEADOWS CENTRAL PROPERTY OWNERS ASSOCIATION, INC.**

**ARTICLE 1**  
**INTRODUCTION, PURPOSES AND DEFINITIONS**

Section 1.1 Introduction. These are the Bylaws of Baxter Meadows Central Property Owners Association, Inc. (the “**Association**”), which Association operates under the Montana nonprofit corporate law, as amended, excluding M.C.A. 70-23-101 and applicable portions of the Montana state statutes as apply to planned communities (the “**Act**”).

Section 1.2 Purposes. The purposes for which the Association was formed are to preserve and enhance the value of the properties of Members and to operate, govern, manage, supervise and care for the Common Interest Community and the Common Area of “Baxter Meadows Central” (the “**Community**”), situated in Gallatin County, State of Montana, as the Community was created pursuant to the Declaration and Map.

Section 1.3 Definitions. Terms used herein shall have the meanings set forth in the Declaration, unless expressly defined herein.

**ARTICLE 2**  
**MEMBERSHIP**

Section 2.1 Membership. Every person or entity who is a record owner of a Lot which is subject to the Declaration shall be a Member of the Association. Members shall be of such classes, if any, established by the Declarant, or established in the Declaration, as the Declaration is amended from time to time. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Each Member shall be allocated votes pursuant to the Declaration.

Section 2.2 Suspension of Member Rights. During any period in which a Member shall be in default in the payment of any Common Expense Assessment levied by the Association, the voting rights of such Member shall be deemed suspended by the Executive Board, without notice or hearing, until such Assessment has been paid. Voting rights and use rights of an Owner may also be suspended, after notice and the opportunity for a hearing, for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater.

### ARTICLE 3 MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. An annual meeting of the Members shall be held during each of the Association's fiscal years, at such time of the year and date as determined by the Executive Board and set forth in the notice. At these meetings, the Directors shall be elected by ballot of the Members, in accordance with the provisions of these Bylaws, the Declaration and Articles. The Members may transact other business as may properly come before them at these meetings. Failure to hold an annual meeting shall not work a forfeiture or dissolution of the Association.

Section 3.2 Special Meetings. Special meetings of the Association may be called by the President, by a majority of the members of the Executive Board or by the Secretary upon receipt of a petition signed by Owners comprising at least 20% of the votes in the Association. The form of notice, date, time and place of the meeting shall be determined by the Board. If a notice for a special meeting demanded pursuant to petition is not given by the Secretary within 30 days after the date the written demand or demands are delivered to the Secretary, the person signing the demand or demands may set the time and place of the meeting and give notice, pursuant to the terms of these Bylaws. Any meeting called under this Section shall be conducted by the President of the Board, or in his/her absence, a person chosen by a majority of the Board.

Section 3.3 Budget Meeting. If called, meetings to consider proposed budgets may be called in accordance with the Declaration. The budget process allows for a veto by a percentage of the membership of a proposed budget adopted by the Executive Board. If a budget meeting of the Members is called, the budget process to be followed is as follows:

- (a) Effective the first full fiscal year after these Bylaws are adopted and become effective, and for each year thereafter, the Executive Board of the Association is to prepare and approve a proposed budget at least annually. Each such proposed budget is first prepared and approved by the Executive Board as a proposed budget.
- (b) Then, within 90 days after the Board of Director's adoption of the proposed budget, the Executive Board must mail or deliver a summary of the proposed budget to those entitled to vote and set a date for a special or annual meeting to consider ratification of the proposed budget.
- (c) Notice for the meeting at which the budget will be considered must be mailed not less than 10 days nor more than 50 days before the meeting.
- (d) At the meeting, unless Owners holding a majority of the total Association vote to reject the proposed budget, the proposed budget is ratified and becomes the approved budget of the Association.



(e) A quorum is not required at the meeting if the meeting is just a budget meeting. If the meeting is also an annual meeting at which other business is to be conducted, a quorum is required for other business to be conducted at the annual meeting, but not for ratification of the budget.

(f) In the event the proposed budget is rejected by a majority vote, the budget last ratified is continued until such time as a subsequent budget proposed by the Executive Board is ratified.

Section 3.4 Notice of Meetings. Written notice of each meeting of Members shall be given by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, or by personal delivery, at least 10 days before, but not more than 50 days before such meeting, to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice.

Section 3.5 Owner Addresses for Notices. Unless an Owner shall have notified the Association by registered or certified mail of a different address, any notice required to be given, or otherwise given by the Association under these Bylaws to any Owner or any other written instrument to be given to any Owner, may be mailed to such Owner in a postage prepaid envelope and mailed by first-class, registered or certified mail to the address of the Lot shown upon the Association's records as being owned by such Owner. If more than one (1) Owner owns a particular Lot, then any notice or other written instrument may be addressed to all of such Owners and may be mailed in one envelope in accordance with the foregoing. Any notice or other written instrument given by the Association in accordance with the foregoing will be deemed to have been given on the date that it is mailed.

Section 3.6 Place of Meetings. Meetings of the Members shall be held in the Community, or in the Gallatin County area, and may be adjourned to a suitable place convenient to the Members, as may be designated by the Executive Board or the President.

Section 3.7 Quorum of Members. The presence at a meeting of Members, in person or by proxy, of Members entitled to cast 25% of all the votes shall constitute a quorum for any action except as otherwise provided in the Articles, Declaration and these Bylaws. If the required quorum is not present at a meeting, the Members who are present shall have power to adjourn the meeting from time to time (to a later date) without notice other than announcement at the meeting until a quorum shall be present or represented. If the required quorum is not present in person or by proxy, then Members entitled to cast at least five percent (5%) of the votes in the Association, shall, except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, constitute a quorum at such meeting.

Section 3.8 Adjournment of the Meeting. By majority vote (as provided herein), any meeting of the Owners may be adjourned to another time and place or to a time and place to be designated by notice.

Section 3.9 Member Voting. At all meetings of Members, each Member may vote in person or by proxy. If only one of several Owners of a Lot is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to the Lot. If more than one of the Owners is present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority of those Owners. Majority agreement exists if any one of the Owners casts the vote allocated to the Lot without protest being made promptly to the person presiding over the meeting by another Owner of the Lot. In the event of disagreement between or among co-Owners and an attempt by two or more of them to cast such vote or votes, such vote or votes shall not be counted. The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Executive Board or Bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust Lot Owner is qualified to vote. Votes allocated to Units owned by the Association may not be cast.

Section 3.10 Proxies. The vote allocated to a Lot may be cast under a proxy duly executed by a Lot Owner. All proxies shall be in writing and filed with the Secretary or designee of the Association. If a Lot is owned by more than one person, each Lot Owner of the Lot may vote or register protest to the casting of the vote by the other Owners of the Lot through a duly executed proxy. In the event of disagreement between or among co-Owners and an attempt by two (2) or more of them to cast such vote or votes, such vote or votes shall not be counted. A Lot Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 11 months after its date, unless it specifies a shorter term or a specific purpose.

Section 3.11 Majority Vote. The vote of a majority of the votes present, in person or by proxy at a meeting at which a quorum is present, shall be binding upon all Lot Owners for all purposes except where a higher percentage vote is required in the Declaration, Articles, these Bylaws or by law.

Section 3.12 Voting Procedures. Voting may be by voice, by show of hands, by consent, by mail, by electronic means, by directed proxy, by written ballot, or as otherwise determined by the Executive Board or the Members present at a meeting.

- (a) In case of a vote by mail or electronic means, the Secretary shall mail or deliver written notice to all Members at each Member's address as it appears in the records of the Association given for notice purposes.

The notice shall include: (i) a proposed written resolution setting forth a description of the proposed action, (ii) a statement that Members are entitled to vote by mail or electronic means for or against such proposal, (iii) a date at least 10 days after the date such notice shall have been given on or before which all votes must be received at the office of the Association at the address designated in the notice, and (iv) the number of votes which must be received to meet the quorum requirement and the percentage of votes received needed to carry the vote. Voting by mail shall be acceptable in all instances in the Declaration, Articles or these Bylaws requiring the vote of Members at a meeting.

(b) The Executive Board may conduct elections of Directors by mail or electronic means, in its sole discretion, and pursuant to procedures adopted by it; *provided however*, that any procedures adopted shall provide for notice to Members of the opportunity to run for a vacant position and/or nominate any Member of the Association for a vacant position, subject to the nominated Member's consent.

(c) In an election of Directors, the Members receiving the largest number of votes shall be elected.

Section 3.13 Order of Business and Rules at Meeting. The Executive Board may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Executive Board and Lot Owners. At meetings of the Members, the Executive Board may order the business of the meeting as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of Minutes of preceding meeting;
- (d) Reports;
- (e) Established number and form of memberships of the Executive Board (if required and noticed);
- (f) Selection of inspectors/tellers to count ballots;
- (g) Election of Directors of the Executive Board (when required);
- (h) Consideration of budget and possible veto by the Owners (if required and noticed);
- (i) Unfinished business; and
- (j) New business.

Failure to strictly follow Robert's Rules of Order shall not invalidate any action taken at a meeting of the Board or Members.

Section 3.14 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing, and the waiver shall be deemed equivalent to the receipt of notice. Attendance at the meeting shall constitute a waiver of notice unless attendance is for the express purpose of objecting to the sufficiency of the notice, in which case, such objection must be raised before the business of which proper notice as not given is put to a vote.

#### ARTICLE 4 EXECUTIVE BOARD OF DIRECTORS

Section 4.1 Number and Term of Office. The affairs of the Community and the Association shall be governed by an Executive Board which shall consist of three Members, elected or appointed as provided below (the "**Executive Board**"). The terms of office of Directors shall be 3 years or until such time as a successor is elected, and the terms of at least 1/3 of the Directors shall expire annually. At any meeting at which Directors are to be elected, the Lot Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Montana nonprofit corporate law for conducting the elections.

Section 4.2 Qualification.

- (a) Only Owners, eligible to vote, current in the payment of Assessments, and otherwise in good standing, may be elected to, or appointed to fill a vacancy on the Board.
- (b) If any Lot is owned by a partnership or corporation, any officer, partner or employee of that Member shall be eligible to serve as a Director and shall be deemed to be a Member for the purposes of these Bylaws.
- (c) Once elected, a Director may not be more than 30 days delinquent in payment of any Assessment.
- (d) Any Director who has un-excused absences from three consecutive Board meetings shall not be qualified to serve on the Board.
- (e) Once elected or appointed, each Director shall attend at least one educational program per year related to the management, operation or law of community associations. The Director shall be entitled to reimbursement of any expenses incurred in attending such educational program(s), as long as approved, in advance, by the Board of Directors. Any Director who has failed to attend an educational program as set forth in this provision shall not be qualified to serve on the Board.
- (f) If a Director is not qualified, the Director's position shall be deemed vacant.





Section 4.3 Election. The Executive Board shall be elected by the Members at the Annual Meeting. The Members may adopt specific procedures which are not inconsistent with these Bylaws or the Act for conducting the elections by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. The Declaration shall govern appointment of Directors of the Executive Board during the Period of Declarant Control, as allowed under the Declaration.

Section 4.4 Resignation of Directors. Any Director may resign at any time by giving written notice to the President, to the Secretary or to the Executive Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

Section 4.5 Removal of Directors.

(a) One or more Directors or the entire Executive Board may be removed at any meeting of the Members called pursuant to these Bylaws, with or without cause, by a vote of 67% of all Members present and entitled to vote. Notice of a meeting of the Members to remove Directors shall set forth that the meeting is being conducted for that purpose and shall be provided to every Member of the Association, including the Directors sought to be removed, as provided in these Bylaws. Directors appointed by the Declarant may not be removed by the Members under this section of the Bylaws. Directors sought to be removed shall have the right to be present at this meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken.

(b) In the event of removal of one or more Directors, a successor shall be elected by the Members at the meeting to serve for the unexpired term of his or her predecessor.

Section 4.6 Vacancies. Vacancies in the Executive Board caused by any reason (other than removal) may be filled by the Executive Board at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be subject to the reserved rights of Declarant to appoint Directors, unless those rights have expired, in which event, appointments shall be made by a majority of the remaining elected Directors constituting the Executive Board. Each person so appointed shall be a Director who shall serve for the remainder of the unexpired term until the next annual meeting.

Section 4.7 Compensation. No Director shall receive any compensation from the Association for any service they may render as a Director, or for acting as such, unless approved by a majority of the votes in the Association at a regular or special meeting of the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of Association duties on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is



affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Executive Board, excluding the interested Director.

**ARTICLE 5  
MEETINGS OF THE EXECUTIVE BOARD**

Section 5.1 Regular Meetings. Regular meetings of the Executive Board shall be held at least twice per year at such place and hour as may be fixed by the Board, without notice. The Board may set a schedule of additional regular meetings by resolution and no further notice is necessary to constitute regular meetings, except as may be required by law.

Section 5.2 Special Meeting. Special meetings of the Executive Board shall be held when called by the President of the Association or by any two Directors after not less than one day notice to each Director. The notice shall be delivered in a manner whereby confirmation of receipt of the notice is received and shall state the time, place and purpose of the meeting.

Section 5.3 Notice of Board Meetings. Except as set forth in Section 5.1 above, written notice of each meeting of the Board shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least three days before such meeting, or by any other means permitted by the Montana nonprofit corporate law, including, but not limited to, personal delivery, facsimile, and e-mail delivery, to each Board member entitled to vote, addressed to the Board member's address last appearing on the books of the Association, or supplied by such Board member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting.

Section 5.4 Location of Meetings and Open Meetings. All meetings of the Executive Board shall be open to attendance by Members, as provided by applicable Montana law. All meetings of the Executive Board shall be held in the Community, by conference call, electronic means or within the Gallatin County area, unless all Directors consent in writing to another location.

Section 5.5 Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

Section 5.6 Quorum. At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, unless there are less than three Directors, in which case, all Directors must be present to constitute a quorum.



The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board unless there are less than three Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting.

Section 5.7 Proxies for Board Meetings. For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that particular proposal, a Director may execute, in writing, a proxy, to be held by another Director. The proxy shall specify either a yes, no or abstain vote on each particular issue for which the proxy was executed. Proxies which do not specify a yes, no or abstain vote shall not be counted for the purpose of having a quorum present or as a vote on the particular proposal before the Board.

Section 5.8 Consent to Corporate Action. The Directors shall have the right to take any action in the absence of a meeting, which they could otherwise have taken at a meeting, by:

- (a) Obtaining the unanimous verbal vote of all Directors which vote shall be noted in the minutes of the next meeting of the Board and ratified at such time;
- (b) Obtaining the written vote of all of the Directors, with at least a majority of the Directors approving the action, provided that those Directors who vote "no" or abstain from voting have waived notice of a meeting in writing. The Secretary shall file the written votes with the minutes of the meetings of the Executive Board;
- (c) Any action taken under subsections (a) and (b) shall have the same effect as though taken at a meeting of the Directors.

Section 5.9 Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Executive Board by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Executive Board. The Director's vote shall be counted and his or her presence noted as if that Director were present in person on that particular matter.



**ARTICLE 6  
POWERS AND DUTIES OF THE EXECUTIVE BOARD**

Section 6.1 Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, Articles, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration, Articles and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Community, and for the operation and maintenance of the Community as a first class residential property, including the following powers and duties:

- (a) Exercise any other powers conferred by the Declaration, Bylaws or Articles of Incorporation;
- (b) Adopt and amend Bylaws and Rules and Regulations, including penalties for infraction thereof;
- (c) To keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the Association;
- (d) Adopt and amend budgets for revenues, expenditures and reserves (subject to the budget being distributed to the Owners and not vetoed by the Owners at a meeting of the Owners, as that procedure is set forth in the Declaration and in these Bylaws);
- (e) As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those Improvements that it is obligated to maintain, based upon age, remaining life, quantity and replacement cost;
- (f) Allocate, assess and collect from each Owner its proportionate share of the Assessments imposed by the Association and pay those Assessments to the Association.
- (g) Hire and discharge managing agents, provided that any agreement for professional management of the Community may not exceed two years. Any such agreement must provide for the termination by either party without cause and without payment of a termination fee or penalty upon 60 days written notice;
- (h) Hire and discharge employees, independent contractors and agents other than managing agents, and prescribe their duties;
- (i) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Governing Documents in the Association's name, on behalf of the Association or two or more Owners on matters affecting the Community;



- (j) Make contracts, administer financial accounts and incur liabilities in the name of the Association;
- (k) Regulate the use, maintenance, repair, replacement and modifications of Common Area;
- (l) Cause additional improvements to be made as a part of the Common Area;
- (m) Acquire, hold, encumber and convey, in the Association's name and in the ordinary course of business, any right, title or interest to real estate or personal property;
- (n) Borrow funds and secure loans with an interest in future Assessments in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary and give security therefore subject to the requirements set forth in the Declaration;
- (o) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Area;
- (p) Impose and receive a payment, fee or charge for services provided to Lot Owners and for the use, rental or operation of the Common Area;
- (q) Impose a reasonable charge for late payment of Assessments and after notice and hearing, levy reasonable fines or Assessments provided for or allowed in the Declaration, Bylaws, Rules and Regulations of the Association;
- (r) Impose a reasonable charge for the preparation and recording of amendments to the Declaration, liens or statements of unpaid Assessments;
- (s) Provide for the indemnification of the Association's Officers and the Executive Board and maintain Directors' and Officers' liability insurance;
- (t) Procure and maintain adequate liability and hazard insurance on property owned by the Association and as further set forth in the Declaration;
- (u) Cause all Directors, Officers, employees or agents having fiscal responsibilities to be bonded or insured, as it may deem appropriate and in such amounts as it may deem appropriate;
- (v) Exercise for the Association all powers, duties, rights and obligations in or delegated to the Association and not reserved to the membership by other provisions of the Declaration, Articles, these Bylaws or the Act; and
- (w) Exercise any other powers conferred by the Declaration or Bylaws.



Section 6.2 Manager. The Executive Board may employ a manager, at a compensation established by the Board, to perform duties and services authorized by the Board. Licenses, concessions and contracts may be executed by the manager pursuant to specific resolutions of the Board and to fulfill the requirements of the budget. The Board shall have the authority to delegate any of the powers and duties set forth in this Article to a manager or managing agent. Regardless of any delegation to a manager or managing agent, the members of the Board shall not be relieved of responsibilities under the Declaration, Articles, these Bylaws or Montana law.

**ARTICLE 7  
OFFICERS AND THEIR DUTIES**

Section 7.1 Enumeration of Offices. The Officers of this Association shall be a President, Vice President, Secretary and Treasurer, who shall at all times be members of the Executive Board, and such other officers as the Executive Board may from time to time create by resolution. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to authority in these Bylaws, and that the offices of the Secretary and Treasurer may be held by the same person. The President and the Secretary offices cannot be held simultaneously by the same person.

Section 7.2 Appointment of Officers. The Officers shall be appointed by the Executive Board at the organizational meeting of each new Executive Board. The Officers shall hold office at the pleasure of the Executive Board. Thereafter, the Officers shall be elected for a one year term at the first meeting of the Executive Board following each annual meeting of the Members.

Section 7.3 Special Appointments. The Executive Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Executive Board may, from time to time, determine.

Section 7.4 Resignation and Removal. Any Officer may resign at any time by giving written notice to the Executive Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective. Any Officer may be removed from office with or without cause by a majority of the Executive Board.

Section 7.5 Vacancies. A vacancy in any office may be filled by appointment by the Executive Board by majority vote of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7.6 Duties. The Duties of the Officers are as follows:

7.6.1 President. The President shall have all of the general powers and duties which are incident to the office of president of a Montana nonprofit corporation including, but not limited to, the following: preside at all meetings of the Executive Board, appoint committees, and see that orders and resolutions of the Executive Board are carried out; sign all contracts, leases and other written instruments; direct, supervise, coordinate and have general control over the day to day affairs. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable.

7.6.2 Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Executive Board shall appoint some other Director to act in the place of the President on an interim basis. The Vice President shall also perform other duties imposed by the Executive Board or by the President.

7.6.3 Secretary. The Secretary shall have charge or shall keep the Minutes of all meetings of the Owners and proceedings of the Executive Board and the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Member's names and addresses. The Secretary shall have charge of the Association's books and papers and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Montana. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable.

7.6.4 Treasurer. The Treasurer shall be responsible for Association funds and for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This Officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Executive Board and shall perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Montana. The Treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Association.

Section 7.7 Delegation. The duties of any Officer may be delegated to the manager or another Executive Board member; *provided, however*, the Officer shall not be relieved of any responsibility under these Bylaws or under Montana law.

Section 7.8 Agreements, Contracts, Deeds, Checks, Etc. Except as provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any Officer of the Association or by any other person or persons designated by the Executive Board.

Section 7.9 Statements of Unpaid Assessments. The Treasurer, assistant treasurer, a manager employed by the Association, if any, or, in their absence, any Officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid Assessments.

The Association may charge a reasonable fee for preparing statements of unpaid Assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. Any unpaid fees may be assessed as a Common Expense against the Lot for which the certificate or statement is furnished.

Section 7.10 Compensation. Compensation of Officers shall be subject to the same limitations as imposed in these Bylaws on compensation of Directors.

## **ARTICLE 8 COMMITTEES**

Section 8.1 Designated Committees. The Association may appoint committees, as deemed appropriate, in carrying out its purposes. Committees shall have authority to act only to the extent designated in the Governing Documents or delegated by the Executive Board.

## **ARTICLE 9 ENFORCEMENT**

Section 9.1 Abatement and Enjoinment of Violations by Lot Owners. The violation of any of the Rules and Regulations adopted by the Executive Board or the breach of any provision of the Governing Documents shall give the Executive Board the right, after notice and hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

- (a) To enter the Lot in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist in that Lot) that is existing and creating a danger to the Common Area contrary to the intent and meaning of the provisions of the Governing Documents. The Executive Board shall not be deemed liable for any manner of trespass by this action; or
- (b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.





Section 9.2 Fines for Violation. By action of the Executive Board, following notice and hearing, the Executive Board may levy reasonable fines for a violation of the Governing Documents or rules.

## ARTICLE 10 BOOKS AND RECORDS

Section 10.1 Records. The Association or its manager or managing agent, if any, shall keep the following records:

- (a) An account for each Lot, which shall designate the name and address of each Lot Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Lot, the amount of each Common Expense Assessment, the dates on which each Assessment comes due, any other fees payable by the Lot Owner, the amounts paid on the account and the balance due;
- (b) An account for each Lot Owner showing any other fees payable by the Lot Owner;
- (c) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association;
- (d) The current operating budget;
- (e) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant;
- (f) A record of insurance coverage provided for the benefit of Lot Owners and the Association;
- (g) Tax returns for state and federal income taxation;
- (h) Minutes of proceedings of meetings of the Lot Owners, Directors, committees of Directors and waivers of notice;
- (i) Copies of at least the three most recent years' correspondence between the Association and Owners; and
- (j) A copy of the most current versions of the Declaration, Articles, Bylaws, Rules and Regulations, and Resolutions of the Executive Board, along with their exhibits and schedules.

Section 10.2 Examination. The books, records and papers of the Association shall at all times, during normal business hours and after reasonable notice, be subject to inspection and copying by any Member, at their expense, for any proper purpose, except documents determined by the Board to be confidential pursuant to a written policy or applicable law. The Executive Board or the manager shall determine reasonable fees for copying.

**ARTICLE 11  
INDEMNIFICATION**

Section 11.1 Obligation to Indemnify.

(a) The Association shall indemnify any person:

(i) Who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association);

(ii) By reason of the fact that that person is or was a Director, Officer or committee member of the Association;

(iii) Provided that the person is or was serving at the request of the Association in such capacity;

(iv) But no indemnification shall be made where:

(1) The person has been adjudged to be liable for negligence or misconduct in the performance of his or her duties to the Association, unless a court determines that, despite the adjudication of liability, but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the expenses if the court deems proper.

(b) The Association's obligation for indemnification shall include: (i) Actual and reasonable expenses (including expert witness fees, attorney fees and costs); (ii) Judgments and fines; and (iii) Reasonable amounts paid in settlement.

(c) The Association shall indemnify when the person identified in subsection (a) of this Section:

(i) Acted in good faith, and;

(ii) In a manner which the person reasonably believed to be in the best interests of the Association, and;

(iii) With respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful;

(iv) To the extent that the person has been wholly successful on the merits in defense of any action, suit or proceeding as described above, the person shall be indemnified against actual and reasonable expenses (including expert witness fees, attorney fees and costs) incurred in connection with the action, suit or proceeding.

Section 11.2 Determination Required.

(a) The Executive Board shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. The determination shall be made by the Executive Board:

(i) By majority vote of a quorum consisting of those members of the Executive Board who were not parties to the action, suit or proceeding, or;

(ii) By independent legal counsel in a written opinion if a majority of those members of the Executive Board who were not parties to the action, suit or proceeding so directs, or;

(b) Additionally, the determination may be made by:

(i) By a vote of the Members if a majority of those members of the Executive Board who were not parties to the action, suit or proceeding so directs.

(c) Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe the conduct was unlawful.

Section 11.3 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the action, suit or proceeding if the person requesting indemnification provides the Executive Board with:

(a) A written affirmation of that person's good faith belief that he or she has met the standard of conduct described above and;

(b) A written statement that such person shall repay the advance if it is ultimately determined that he or she did not meet the standard of conduct described above.

Section 11.4 No Limitation of Rights. The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Executive Board, or otherwise, nor by any rights which are granted pursuant to C.R.S. § 38-33.3-101, *et seq.*, and the Montana nonprofit corporate law, as those statutes may be amended from time to time.

Section 11.5 Directors and Officers Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a member of the Executive Board, the manager, committee members, or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against such person by virtue of such person's actions on behalf of the Association or at the direction of the Board, whether or not the Association would have the power to indemnify such person against such liability under provisions of this Article.

## ARTICLE 12 MISCELLANEOUS

Section 12.1 Notices to the Association. All notices to the Association or the Executive Board shall be delivered to the office of the manager, or if there is no manager, to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Owners. Except as otherwise provided, all notices to any Owner shall be mailed to the Owner's address as it appears in the records of the Association. All notices shall be deemed to have been given when mailed or transmitted, except notices of changes of address, which shall be deemed to have been given when received.

Section 12.2 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 12.3 Office. The principal office of the Association shall be within the Community or at such other place as the Executive Board may from time to time designate.

Section 12.4 Working Capital. A working capital fund is established pursuant to the Declaration. Any amounts paid into this fund shall not be considered as advance payment of Assessments. Each Unit's share of the working capital fund may will be collected and then contributed to the Association by the Declarant at the time the sale or resale of the Unit or Lot is closed or at the termination of Declarant control. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment.


**ARTICLE 13  
AMENDMENTS**

Section 13.1 Bylaw Amendments/Vote of the Members. These Bylaws may be amended only by the affirmative vote of at least 67% of the total Association vote present or represented by proxy at any regular or special meeting, provided that a quorum is present at any such meeting, provided that notice has been sent to the Members pursuant to these Bylaws, and such notice sets forth that the meeting is being conducted for the purpose of amendment. No amendment shall be made to the quorum requirement set forth in these Bylaws without the affirmative vote of a majority of the Members present, in person or by proxy, at a regular or special meeting of the Members at which a quorum, as set forth in these Bylaws, is present.

Section 13.2 Restrictions on Amendments. No amendment of the Bylaws of this Association shall be adopted which would affect or impair the validity or priority of any security interest covering any Lot, or which would materially change the provisions of the Bylaws with respect to a first lien security interest or the interest of an institutional mortgagees of record.

## CERTIFICATION

I, the undersigned, do hereby certify that I am the Secretary of Baxter Meadows Central Property Owners Association, Inc., a Montana nonprofit corporation, and that the foregoing Bylaws constitute the Bylaws of said Association, as duly adopted by the Executive Board.

  
Secretary



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